IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P. BALACHANDRAN

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

Crl. MC. No. 854 of 2005(B)

AGAINST THE ORDER DATED 10/09/2004 IN CMP. 3340/04 IN CMP.3157/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, TRIVANDRUM
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PETITIONER:

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY SRI. P.P. THAMPY, D.G.P

RESPONDENT:

JOMON PUTHENPURACKAL,
S/O. KURIAKOSE, PUTHENPURACKAL HOUSE,
NEENDOOR P.O., KOTTAYAM.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. BALACHANDRAN, J.

Crl. M.C. NO. 854 OF 2005

Dated this the 21st day of August, 2007.

O R D E R

What is challenged in this Crl. M.C. is Annexure-A order passed by the Judicial First Class Magistrate-III, Thiruvananthapuram on C.M.P. No. 3340/04 in C.M.P. No. 3157/2003 whereby he has ordered that the stay of proceedings in C.M.P. No. 3157/03 under Section 210 Cr.P.C be vacated and enquiry be resumed.

2. The stay was initially ordered in the private complaint filed by the respondent as C.M.P. No. 3157/03 for the reason that another complaint on the very same matter filed by one Ajith had been forwarded by the Magistrate for investigation and report under Section 156(3) Cr.P.C and investigation was being conducted by the police, and that was made known to the Magistrate. Despite repeated postings for report, the only report received in the court was on 09.09.2004 stating that the investigation will be over by another one month with, however, no details about the progress of the investigation. Consequently, the learned Magistrate called for the case diary in the case so

registered and on perusing the case diary, he was convinced that the investigation by the police in the said case has been closed on the ground that the complaint is factually incorrect, but however, that during investigation the police had not made any attempt to trace out the allegedly forged document to verify whether the document has been forged by scanning the signature of Ahamed Patel by using mechanical and electrical devices to prepare such a document and further that even the telephone number to which the fax was received was not traced, and that the investigation was found by him to have been conducted in a perfuntory manner without paying attention to the crux of the matter under investigation. It was in the circumstances that the learned Magistrate vacated the stay as there did remain nothing as part of the investigation connected with the matter and so the procedure under Section 210 Cr.P.C did not at all deserve to be adopted any further. No infirmity at all is seen in the order passed by the Magistrate.

3. It is vehemently contended by the Director General of Prosecution that unless and until the final report is submitted by the police, the complaint filed by the respondent which was

stayed by the Magistrate cannot be taken up again for enquiry as the case stayed under Section 210 Cr.P.C has necessarily to await the final report in the crime. In the instant case probably for political reasons, though the investigation was closed, no final report was being submitted by the police and the police cannot expect to have a complaint got stayed for all times to come avoiding filing of final report in the case registered by them.

When the crime registered by the police on the basis of the complaint that was forwarded by the Magistrate under Section 156(3) Cr.P.C was closed, Section 210 Cr.P.C has no application to have the complaint filed by the respondent stayed without conducting any further enquiry in the matter.

This Crl. M.C. in the result is devoid of merit and it is dismissed.

K.P. BALACHANDRAN
JUDGE.

smp